**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.28167 of 1995

**12.2006**

Between:

Mala Chandraiah (died), S/o.Narsaiah
And others

... Petitioners

AND

The Commissioner of Land Revenue, Nampally Station Road, Hyderabad
And others

... Respondents

**THE HON'BLE SRI JUSTICE V.V.S. RAO**

WRIT PETITION No.28167 of 1995

ORDER:

The petitioner herein was assigned land admeasuring Acs.2.14 guntas in survey No.110 of Bomraspet Mandal in Mahaboobnagar District (hereafter called, the subject land) in June 1980, from out of land, which was declared surplus under the proceedings of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Land Reforms Act, for brevity). The same was cancelled by proceedings dated 10.2.1982 by the Revenue Divisional Officer (RDO), Narayanpet – the third respondent herein. The petitioner was unsuccessful in the appeal before the District Revenue Officer (DRO), Mahaboobnagar, and also in the further appeal before the Commissioner of Land Revenue (CLR), the first respondent herein, who dismissed the petitioner's appeal on 22.11.1995. This writ petition is filed assailing the order of the CLR.

Limiting the narration, the bare facts and allegations, are these. The subject land was purchased by the petitioner in 1967 from one Buchi Reddy. He filed a declaration under Land Reforms Act showing the subject land also. The same was declared as surplus land. The petitioner then approached the RDO for assignment of the same land under Section 14 of the Land Reforms Act. His request was accepted and a patta was granted in June 1980. His name was mutated and Pattadar Pass Book (PPB) and title deed was also issued to him. On a complaint by respondents 5 to 8 to the effect that the petitioner is not resident of Hakimpet village, that he is resident of Sarjakhanpet village having land admeasuring Acs.4.25 guntas and that he is not an agriculturist by profession. The RDO, considering the complaint as appeal under Section 158(1) of A.P. (Telangana Area) Land Revenue Act, 1317F (hereafter called, the Revenue Act), passed orders on 10.2.1982. The petitioner then preferred appeal before the District Collector, which was decided by the DRO on 19.5.1990 against the petitioner. The petitioner was also unsuccessful, as noticed earlier, before the CLR.

A counter affidavit is filed on behalf of respondents 1 to 4. Sustaining the impugned order, it is stated in the counter affidavit of the Mandal Revenue Officer (MRO), the fourth respondent herein, that after assignment of the ceiling surplus land, petitioner did not pay the premium due on 01.3.1981. M/s.Sayappa, Bapalla, Ramulu,

Pandurangam and 21 other landless poor persons of Hakimpet village, filed a representation before the Collector alleging the assignment to the ineligible persons of Sarjakhanpet village. After receiving the complaint, the RDO conducted enquiry and *inter alia* found that petitioner is owner of land admeasuring Acs.4.25 guntas and, therefore, he is not entitled for assignment. The allegation that no proper opportunity was given to the petitioner is denied. It is further stated that the cancellation of assignment is made as per Rule 10(5) of A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 (the Rules, for brevity) for violation of Rule 10 (4)(a) of the Rules.

Respondents 5 to 8 also filed counter affidavit for which a reply affidavit is filed. It is the case of the respondents that the petitioner avoided the enquiry before the appellate authority to delay the proceedings, that the matter was dismissed for default and that when the petitioner filed application to set aside the default order, the DRO decided the matter on merits. It is alleged that the petitioner is not entitled for assignment and that the respondents are poor landless Harijans, entitled for assignment. They also state that the RDO conducted enquiry and came to the conclusion that the petitioner is not a resident of Hakimpet village and, therefore, he is not entitled for assignment.

Learned Counsel for the petitioner submits that when the petitioner was assigned land in June 1980, against the said assignment, respondents 5 to 8 could not have filed appeal under Section 158 of the Revenue Act after lapse of about two years. According to the learned Counsel, the order passed by the RDO on 10.2.1982 is without jurisdiction and barred by limitation. He secondly submits that initially the petitioner filed a writ petition being W.P.No.4387 of 1985 against the order of the RDO and this Court disposed of the same directing the petitioner to prefer appeal and, therefore, the order passed by the appellate authority is contrary to the order of this Court in W.P.No.4387 of 1985. He nextly submits that the petitioner was not given an opportunity before cancelling the assignment and, therefore, it is in violation of the principles of natural justice. **Per contra**, learned Assistant Government for Revenue (Assignment) and learned Counsel for respondents 5 to 8 submit that the petitioner failed to pay the premium and, therefore, the RDO passed orders cancelling the assignment in accordance with the Land Reforms Act and the Rules. Mere reference to Section 158 of the Revenue Act does not take away the jurisdiction of the RDO. They nextly submit that several opportunities were given to the petitioner but he failed to avail the opportunities either by not appearing before the authorities or by not producing the documents in support of his claim.

There is no dispute that the petitioner was assigned ceiling surplus land situated at Hakimpet village. Therefore, when the assignment is cancelled and the land is ordered to be resumed by the original authority, appellate authority and the CLR, legality or otherwise of such action can only be decided with reference to the provisions of the Land Reforms Act and the Rules. Insofar as this aspect is concerned, the Revenue Act has no bearing, even if the original authority treated the representation made by respondents 5 to 8 or others as an appeal under Section 158(1) of the Revenue Act. Insofar as merit of the case is concerned, the CLR upheld the orders of the lower authorities on three grounds, namely, (i) that the petitioner is not resident of Hakimpet village but resident of Sarjakhanpet village and, therefore, the assignment in his favour is in violation of Rule 10 of the Rules; (ii) the petitioner is owner of land admeasuring Acs.4.25 guntas in survey Nos.109 and 110, which stands in his name and, therefore, he is not a landless poor person; and (iii) the petitioner failed to pay premium instalments. The reasons recorded by the CLR while dismissing the appeal of the petitioner may be extracted.

> The allotment was made by Tahsildar, Kodangal on the basis of the decision taken by the Taluk Assignment Committee in its meeting held on 12.6.1980. According to Rule 10 of A.P. Land Reforms (COAH) Rules, 1974, surplus land surrendered by Pattadars under Land Ceilings Laws should be allotted to the landless poor persons of the village when the lands are located on payment of premium. It is seen from the material available on record that the applicant is not a resident of Hakimpet village but a resident of Sarjakhanpet village and that the appellant has altogether Acs.4.25 cents of land in S.Nos.109 and 110 in his name. Besides, it is also seen from the record that the appellant did not pay the premium instalment due on 1.3.1980. Although several chances were given to them by the Enquiry Officer to appear before him and produce evidence in support of their stand, the appellants did not avail themselves of the opportunities afforded to them. Tahsildar, Kodangal, who recommended allotment to the appellant did not examine his eligibility carefully and did not brief properly the Taluk Assignment Committee, which in consequence decided that the disputed land might be allotted to the present appellant.

Though the learned Counsel for the petitioner vehemently attacked the orders of the RDO and DRO, this Court is not inclined to consider these submissions. It may be pointed out that the order of the original authority as well as first appellate authority merged in the order of the CLR and in this writ petition the petitioner has to assail the validity of the order of the first respondent and not the orders of the

lower authorities. Doctrine of merger applies in this case and in the eye of law, the two orders affirmed by the CLR do not exist in law, as they merged in the order of the final appellate authority.

The submission of the learned Counsel for the petitioner based on limitation for the purpose of appeal under Section 158(1) of the Revenue Act is misconceived. As concluded hereinabove, the land is ceiling surplus land and the relevant provisions that are attracted are those under the Land Reforms Act and the Rules. Section 14 of the Land Reforms Act deals with disposal of land vested in the Government after the surplus land is taken possession by the Government. Section 14(1) of the Land Reforms Act requires the Government to allot the surplus land either as house sites or for the purpose of agriculture in accordance with the Rules made under the Land Reforms Act. Subsection (3) of Section 14 of the Land Reforms Act enables the RDO to resume the land when an allottee fails to pay the premium amount as per Section 14(2) of the Land Reforms Act. Subsections (4) and (5) of Section 14 of the Land Reforms Act also enable the RDO to resume the land for violation of conditions of the assignment/allotment. Rule 10 of the Rules deals with disposal of land and contains the procedure. Rule 10(1) of the Rules prescribes that whenever land is allotted under Section 14 of the Land Reforms Act priority shall be given to local residents where the land is situated and such allotment shall be subject to the conditions enumerated in Rule 10(4) of the Rules. Rule 10(5) enables the RDO to cancel the allotment and resume possession either for non-payment of premium amount or for violation of conditions of allotment. In this case, as found by the CLR, initially the land was assigned/allotted to the petitioner by the then Tahsildar without conducting enquiry as to whether petitioner is a landless and poor person or whether he is resident of Hakimpet village or not. Secondly, it was also found that the petitioner failed to pay the premium amount. Therefore, this Court does not find any infirmity in the order passed by the CLR. It is needless to mention that either Section 14(3) of the Land Reforms Act or Rule 10(5) of the Rules do not prescribe any limitation for exercising power for cancellation of assignment/allotment by the RDO.

The submission that no opportunity was given to the petitioner before cancellation is devoid of any merit. The petitioner engaged a Counsel, when the matter was enquired into by the RDO. The RDO issued notice on 20.11.1991 and on 10.12.1991 to produce documents. The petitioner neither produced documents nor addressed the arguments. Secondly, even on his own admission, the DRO initially dismissed the matter for default and passed orders on merits when the petitioner moved an application to set aside the

default order. Before the appellate authority also the petitioner did not produce any document in support of his case that he is a landless poor person and that he is resident of Hakimpet village. Again before the CLR, as recorded in the impugned order of the CLR dated 22.11.1995, neither the petitioner nor his Counsel was present when the case on 17.11.1995 and, therefore, the impugned order was passed after verifying the records. A person who fails to prosecute the case before the Revenue Authorities and who fails to produce the evidence in support of the claim, cannot be heard to complain before this Court that opportunity was not given while withdrawing the benefit conferred earlier under an illegal order.

The writ petition is devoid of any merit and is accordingly dismissed with costs.

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(**V.V.S.RAO, J**)

December , 2006
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